

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Orlando Garcia,

Plaintiff,

v.

SBMANN5, LLC, a Nevada Limited
Liability Company;
WSM LLC, a California Limited
Liability Company

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Orlando Garcia complains of SBMANN5, LLC, a Nevada Limited Liability Company; WSM LLC, a California Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk. He uses a wheelchair for mobility.

2. Defendant SBMANN5, LLC owned the real property located at or about 9401 MacArthur Blvd, Oakland, California, in August 2021.

3. Defendant SBMANN5, LLC owns the real property located at or about

1 9401 MacArthur Blvd, Oakland, California, currently.

2 4. Defendant WSM LLC owned Blue Bird Smoke Shop located at or about
3 9401 MacArthur Blvd, Oakland, California, in August 2021.

4 5. Defendant WSM LLC owns Blue Bird Smoke Shop located or about
5 9401 MacArthur Blvd, Oakland, California, currently.

6 6. Plaintiff does not know the true names of Defendants, their business
7 capacities, their ownership connection to the property and business, or their
8 relative responsibilities in causing the access violations herein complained of,
9 and alleges a joint venture and common enterprise by all such Defendants.
10 Plaintiff is informed and believes that each of the Defendants herein is
11 responsible in some capacity for the events herein alleged, or is a necessary
12 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
13 the true names, capacities, connections, and responsibilities of the Defendants
14 are ascertained.

15
16 **JURISDICTION & VENUE:**

17 7. The Court has subject matter jurisdiction over the action pursuant to 28
18 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
19 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

20 8. Pursuant to supplemental jurisdiction, an attendant and related cause
21 of action, arising from the same nucleus of operative facts and arising out of
22 the same transactions, is also brought under California's Unruh Civil Rights
23 Act, which act expressly incorporates the Americans with Disabilities Act.

24 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
25 founded on the fact that the real property which is the subject of this action is
26 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

10. Plaintiff went to Blue Bird Smoke Shop in August 2021 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws. Not only did Plaintiff personally encounter the unlawful barriers in August 2021, but he wanted to return and patronize the business again but was specifically deterred due to his actual personal knowledge of the barriers gleaned from his encounter with them.

11. Blue Bird Smoke Shop is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the date of the plaintiff's visit, the defendants failed to provide accessible paths of travel in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. Blue Bird Smoke Shop provides paths of travel to its customers but fails to provide wheelchair accessible paths of travel.

14. A problem that plaintiff encountered was that the ramp that runs up to the entrance did not have a level landing. The running slope was about 33%.

15. Plaintiff believes that there are other features of the paths of travel that likely fail to comply with the ADA Standards and seeks to have fully compliant paths of travel.

16. On information and belief, the defendants currently fail to provide wheelchair accessible paths of travel.

17. The failure to provide accessible facilities created difficulty and discomfort for the Plaintiff.

18. These barriers relate to and impact the plaintiff's disability. Plaintiff personally encountered these barriers.

19. Even though the plaintiff did not confront the barriers, the defendants fail to provide wheelchair accessible sales counters. The sales counter is 44

1 inches high and there is no lowered portion of the sales counter suitable for
2 wheelchair users. Additionally, the paths of travel in Blue Bird Smoke Shop are
3 less than 36 inches in width in some places. Plaintiff seeks to have these
4 barriers removed as they relate to and impact his disability.

5 20. As a wheelchair user, the plaintiff benefits from and is entitled to use
6 wheelchair accessible facilities. By failing to provide accessible facilities, the
7 defendants denied the plaintiff full and equal access.

8 21. The defendants have failed to maintain in working and useable
9 conditions those features required to provide ready access to persons with
10 disabilities.

11 22. The barriers identified above are easily removed without much
12 difficulty or expense. They are the types of barriers identified by the
13 Department of Justice as presumably readily achievable to remove and, in fact,
14 these barriers are readily achievable to remove. Moreover, there are numerous
15 alternative accommodations that could be made to provide a greater level of
16 access if complete removal were not achievable.

17 23. Plaintiff will return to Blue Bird Smoke Shop to avail himself of its goods
18 or services and to determine compliance with the disability access laws once it
19 is represented to him that Blue Bird Smoke Shop and its facilities are
20 accessible. Plaintiff is currently deterred from doing so because of his
21 knowledge of the existing barriers and his uncertainty about the existence of
22 yet other barriers on the site. If the barriers are not removed, the plaintiff will
23 face unlawful and discriminatory barriers again.

24 24. Given the obvious and blatant nature of the barriers and violations
25 alleged herein, the plaintiff alleges, on information and belief, that there are
26 other violations and barriers on the site that relate to his disability. Plaintiff will
27 amend the complaint, to provide proper notice regarding the scope of this
28 lawsuit, once he conducts a site inspection. However, please be on notice that

the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

25. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

26. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities,

including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

27. When a business provides paths of travel, it must provide accessible paths of travel.

28. Here, accessible paths of travel have not been provided in conformance with the ADA Standards.

29. When a business provides sales counters, it must provide accessible sales counters.

30. Here, accessible sales counters have not been provided in conformance with the ADA Standards.

31. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

32. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

33. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

34. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,

1 that persons with disabilities are entitled to full and equal accommodations,
2 advantages, facilities, privileges, or services in all business establishment of
3 every kind whatsoever within the jurisdiction of the State of California. Cal.
4 Civ. Code § 51(b).

5 35. The Unruh Act provides that a violation of the ADA is a violation of the
6 Unruh Act. Cal. Civ. Code, § 51(f).

7 36. Defendants' acts and omissions, as herein alleged, have violated the
8 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
9 rights to full and equal use of the accommodations, advantages, facilities,
10 privileges, or services offered.

11 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
12 discomfort or embarrassment for the plaintiff, the defendants are also each
13 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
14 (c).)

15
16 **PRAYER:**

17 Wherefore, Plaintiff prays that this Court award damages and provide
18 relief as follows:

19 1. For injunctive relief, compelling Defendants to comply with the
20 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
21 plaintiff is not invoking section 55 of the California Civil Code and is not
22 seeking injunctive relief under the Disabled Persons Act at all.

23 2. For equitable nominal damages for violation of the ADA. See
24 Uzuegbunam v. Preczewski, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
25 and any other equitable relief the Court sees fit to grant.

26 3. Damages under the Unruh Civil Rights Act, which provides for actual
27 damages and a statutory minimum of \$4,000 for each offense.
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1 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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4 Dated: September 28, 2021 CENTER FOR DISABILITY ACCESS

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7 By: _____



8 Amanda Seabock, Esq.
9 Attorney for plaintiff
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